

findings of fact supporting its decision, including matters it considered as egregious aggravation. See G.S. 14-27.2A and 14-27.4A.

Violent Habitual Felons

An offender convicted as a violent habitual felon (third conviction for a Class A, B1, B2, C, D, or E felony) must be sentenced to life without parole. Procedures for determining violent habitual felon status are similar to procedures for establishing habitual felon status. See G.S. 14-7.7 to 14-7.12.

Case Law

- If a defendant is found not guilty of violent habitual felon status, the State may not charge the defendant as a violent habitual felon in a subsequent prosecution based on the same two prior convictions.²

Habitual Felons

An offender convicted as an habitual felon (fourth conviction for a felony) is sentenced as a Class C felon. Prior felony convictions used to establish habitual felon status cannot also be used in the calculation of the prior record level. See G.S. 14-7.1 to 14-7.6.

Case Law

- Once a defendant pleads guilty to, or is found guilty of, habitual felon status, the trial court must sentence the defendant as an habitual felon.³
- The prosecutor may “withdraw an habitual felon indictment as to some or all of the underlying felony charges pending against a defendant, up until the time that the jury returns a verdict of guilty that defendant had attained the status of an habitual felon.”⁴
- A finding of extraordinary mitigation under G.S. 15A-1340.13 may not be used to avoid the requirement in G.S. 14-7.6 that an habitual felon sentence “run consecutively with and shall commence at the expiration of any sentence being served” by the defendant.⁵
- There is no time limitation for the use of a prior conviction in an habitual felon indictment.⁶
- If prior convictions were consolidated for judgment or obtained during the same week of superior court, one conviction may be used to establish habitual felon status, and a second conviction may be used to calculate the defendant’s prior record level.⁷

² *State v. Safrit*, 145 N.C. App. 541, 551 S.E.2d 516 (2001).

³ *State v. Wells*, ___ N.C. App. ___, 675 S.E.2d 85 (2009).

⁴ *State v. Murphy*, 193 N.C. App. 236, 666 S.E.2d 880 (2008).

⁵ *State v. Watkins*, 189 N.C. App. 784, 659 S.E.2d 58 (2008).

⁶ *State v. Hensley*, 156 N.C. App. 634, 577 S.E.2d 417 (2003).

⁷ *State v. McCrae*, 124 N.C. App. 664, 478 S.E.2d 210 (1996); *State v. Truesdale*, 123 N.C. App. 639, 473 S.E.2d 670 (1996).